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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,392	01/13/2004	Roel Otto	114698	9966

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OLIFF & BERRIDGE, PLC
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EXAMINER

BARNHART, LORA ELIZABETH

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/755,392

Applicant(s)

OTTO, ROEL

Examiner

Lora E. Barnhart

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-10.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
please see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: Note the attached PTO-892, Paper No. 20050706.

Lora Barnhart
7/7/05

The request for reconsideration has been fully considered, but it does not place the application in condition for allowance because the arguments regarding the objection to the specification and the 35 U.S.C. 112, 102 and 103 rejections are not persuasive.

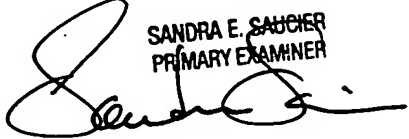
The objection to the specification is maintained for reasons of record and further below. Applicant has not particularly addressed the examiner's points at pages 2 and 3 of the Office action mailed 3/30/05.

Claims 9 and 10 remain under 35 U.S.C. § 112, second paragraph, for reasons of record and further below. Applicant asserts that a person of ordinary skill in the art would understand that the "wherein" clause of claim 9, line 3, refers to the bacteria themselves, but the examiner disagrees. The "wherein" phrase as currently written can clearly be interpreted as modifying the "removing" step of claim 9, line 2. Clarification is required.

Claims 1-5 and 7 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Payot et al. taken in light of Godshall et al. for reasons of record and further below. Applicants assert that the Godshall et al. reference does not teach that molasses contains pentoses per se. The examiner agrees that Godshall et al. teaches polysaccharides, which do not contain pentose monomers, as the applicant points out (remarks, pages 7-8). Regardless of the teachings of Godshall et al., however, molasses inherently contains pentose monomers. Meyer (1910, reference U) and Pellet (1917, reference V) teach that molasses contains pentoses. Meyer teaches that beet molasses comprises pentoses (line 12). Pellet teaches that cane molasses comprises both arabinose and xylose (line 9). Meyer and Pellet are cited herein solely to show the inherent characteristics of the molasses in the primary reference (Payot et al.) and, as such, this is not a new grounds of rejection.

Claims 1-5 and 7-9 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Green et al. taken in view of Payot et al. and Godshall et al. for reasons of record and further below. Applicants assert that the Green et al. reference is not available prior art (Remarks, page 10, paragraph 2). The examiner disagrees. Green et al. is available prior art because it was filed with the International Bureau on or after November 29, 2000 (the filing date for Green et al. is July 18, 2002); it designates the United States; and it was published in English. The international filing date of Green et al. (7/18/02) is the U.S. filing date for prior art purposes under 35 U.S.C. § 102(e) taken in light of the American Inventors Protection Act (AIPA) of 1999. See M.P.E.P. § 2136.02-II.

Lb



SANDRA E. SAUCIER
PRIMARY EXAMINER